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Attorneys for Defendant
WALGREEN CO.

(Plaintiffs' counsel on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GEORGE WILSON, TANARICA
MARTIN, individually and on behalf of
all other similarly situated,

Plaintiffs,

v.

WALGREEN CO. and DOES 1 to 50,
inclusive,

Defendant.

Case No. CV11-7664 PSG (FFMx)

**JOINT PLANNING REPORT
PURSUANT TO FED. RULE CIV.
PROC. 26 AND LOCAL RULE 26**

Date: October 1, 2012
Time: 2:00 p.m.
Courtroom: 880 - Roybal
Judge: Hon. Philip s. Gutierrez

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Attorneys for the Representative Plaintiffs
and the Plaintiff Classes

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local District Court Rule 26-1, and the Court's Order Setting the Scheduling Conference date, Plaintiffs Tanarica Martin ("Martin") and George Wilson ("Wilson") (collectively "Plaintiffs") and Defendant Walgreen Co. ("Defendant" or "Walgreens"), through their respective counsel of record, jointly submit their Joint Rule 26(f) Report, as follows:

I. SHORT STATEMENT OF THE CASE

On May 13, 2011, Plaintiffs filed the instant class action against Walgreens in the San Francisco Superior Court. On June 14, 2011, Walgreens removed the case to the United States District Court for the Northern District pursuant to 28 U.S.C. §§ 1332(d)(2) (the Class Action Fairness Act of 2005 ("CAFA")), and removal jurisdiction under 28 U.S.C. §§ 1441(a) and 1446.

On September 16, 2011, the case was transferred to this Court pursuant to Walgreens' Motion to Transfer.

Plaintiffs bring this action as a class action and a representative action for alleged violations of California's meal and rest break requirements, for failure to pay wages for all hours worked including work allegedly performed off-the-clock, for failure to provide accurate, itemized wage statements, for waiting-time penalties, for violation of California's Unfair Competition Law ("UCL"), and for violation of California's Private Attorney General Act ("PAGA").

In their Second Amended Complaint ("SAC"), Plaintiffs seek to represent two employee sub-classes: (1) all "Assistant Store Managers" employed by Walgreens in California between May 13, 2007 and the present ("assistant manager sub-class") and/or (2) all non-exempt retail employees who were "required, as a result of security searches or otherwise, to remain at work, under the control of Walgreens, after completion of these workers' ordinary duties, for which they were not compensated" between May 13, 2007 and the present ("non-exempt retail

1 employee/security-check sub-class”). (SAC ¶ 2.) Plaintiffs seek to represent these
2 individuals on a class-wide basis under Rule 23 and on a representative basis under
3 PAGA.

4 Defendant denies Plaintiffs’ allegations and further asserts that it has
5 complied with the applicable provisions of California Wage Order 7-2001, and the
6 California Labor Code.

7 Defendant further contends that PAGA is unconstitutional because it violates
8 the separation of powers doctrine because in that it allows private attorneys to
9 prosecute public claims in violation of their ethical duty of neutrality, materially
10 impairing the judiciary’s role in regulating attorney conduct. Defendant further
11 contends that PAGA is unconstitutional as applied to this action because it provides
12 for the imposition of penalties that are arbitrary, capricious and disproportionate to
13 the alleged harm.

14 Defendant further asserts that Plaintiffs’ proposed class is overly broad in
15 scope in that Plaintiffs worked only in a few stores in Los Angeles County and then
16 only in the position of MGT during the putative class period. As such, Plaintiffs
17 cannot represent the interests of Defendant’s thousands of employees working in
18 other job positions (which Plaintiffs never held) and at other stores throughout
19 California.

20 **II. COMPLEX CASE**

21 *Defendant*

22 Defendant considers this case to be complex based on the fact that there are
23 at least three other putative class action cases asserting similar claims as to similar
24 putative classes pending in this Court and in the Northern District Court. Such
25 related cases include, *Donna Sabzghabaian, et al. v. Walgreen Co., et al.*, currently
26 pending in this court, before the Hon. Philip S. Gutierrez, Case No. SACV12-00049
27 PSG (FFMx) (hereinafter the “Sabzghabaian Case”). This case is related to the
28

1 Sabzghabaian Case within because both cases involve the same defendant,
2 Walgreen Co., and both cases involve putative class claims of alleged failure to pay
3 wages, failure to provide proper wage statements, failure to pay all wages due at
4 termination, and unfair business practices, for a putative class of all non-exempt
5 employees of Defendant in California during the four years preceding the filing of
6 the complaint.

7 This case is further related to the matter of *Rene Hodach, et al. v. Walgreen*
8 *Co., et al*, currently pending in the United States District Court, Central District of
9 California, Case No. 2:12-CV-07491-JAK-MRW, before the Honorable John A.
10 Kronstadt (hereinafter the “Hodach Case”). This case is related to the Hodach Case
11 because both cases involve the same defendant, Walgreen Co., and both cases
12 involve putative class claims of alleged failure to pay wages, failure to provide
13 proper wage statements, failure to pay all wages due at termination, and unfair
14 business practices, for a putative class of all non-exempt employees of Defendant in
15 California during the four years preceding the filing of the complaint. Both cases
16 also include a companion claim for purported violation of the PAGA.

17 This case is further related to the matter of *Shane Jerominski and Alicia*
18 *Arena, et al v. Walgreen Co. et al*, currently pending in the United States District
19 Court, Northern District of California, Case No. CV-12-4635-MEJ, before the
20 Honorable Maria-Elena James (hereinafter the “Jerominski Case”). This case is
21 related to the Jerominski case because both cases involve the same defendant,
22 Walgreen Co., and both cases involve putative class claims of alleged failure to pay
23 wages, failure to provide proper wage statements, failure to pay all wages due at
24 termination, and unfair business practices, for a putative class of all non-exempt
25 employees of Defendant in California during the four years preceding the filing of
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1 the complaint. Both cases also include a companion claim for purported violation
2 of the PAGA.

3 Defendant proposes that all related cases be coordinated pretrial pursuant to
4 section 10.123 of the Manual for Complex Litigation and transferred, if not already
5 transferred to the Central District Court, before the Honorable Philip J. Gutierrez.
6 Defendant also proposes that depositions of common witnesses be coordinated
7 pursuant to section 11.455 to avoid duplication of efforts. Defendant also proposes
8 that implement the practices under sections 11.443 and 11.464 to protect Defendant
9 from any undue burden imposed as a result of having to respond to voluminous
10 document requests and special interrogatories. Defendant will continue to meet and
11 confer with opposing counsel in all related matters to discuss whether other
12 portions of the Manual for Complex Litigation may be appropriate in this case and
13 the related cases.

14 *Plaintiffs*

15 Plaintiffs' counsel will continue to meet and confer with Defendant to
16 determine whether the tag-along cases should be formally coordinated. As
17 explained to the Court by Class Counsel, Scott Cole and Associates will employ its
18 best efforts to avoid duplicative discovery between any overlapping cases.

19 **III. MOTION SCHEDULE**

20 *Defendant*

21 Defendant anticipates filing Motion(s) for Summary Judgment or in the
22 Alternative, Summary Adjudication as to Plaintiffs' individual claims. Defendant
23 is contemplating filing its Motion(s) precertification, by April 2013, provided there
24 are no impediments to completing Plaintiffs' depositions by February 28, 2013.

25 Should Defendant not prevail on its precertification Motion(s) for Summary
26 Judgment, Defendant intends to file a Motion to Deny Class Certification and to
27 Strike the Class and Representative allegations on or before June 30, 2013.
28

1 Defendant requests it be provided 60 days to respond to Plaintiffs' Motion
2 for Class Certification, should Plaintiffs file such a motion, to permit Defendant to
3 depose any individuals, including any expert witnesses, who submit declarations in
4 support of Plaintiffs' Motion.

5 Should this Court certify a class, Defendant anticipates that it may file a
6 Motion for Summary Judgment as to the class claims and a Motion for
7 Decertification of the class claims within 150 days after the Court's order certifying
8 the class.

9 *Plaintiffs*

10 This case was filed more than a year ago on May 13, 2011 and due to various
11 pleading and discovery issues put forth by Defendant, including Defendant's
12 motion to dismiss and Plaintiffs' motion to compel discovery, this case has gotten
13 off to a slow start. Nevertheless, since Plaintiffs' counsel litigated some of the same
14 claims in the previous *Kelly v. Walgreen* case, Plaintiffs fully expect to complete
15 certification discovery and file their class certification brief by the end of May
16 2013. Plaintiffs believe that class certification briefing should track the Federal
17 Rules of Civil Procedure. If the volume of the evidentiary record put forth by
18 Plaintiffs at class certification warrants an extension of the normal briefing
19 schedule, Defendant can seek such relief at that time.

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21 **IV. SETTLEMENT DISCUSSIONS AND SETTLEMENT MECHANISM**

22 *Defendant*

23 The parties have not engaged in any meaningful settlement negotiations as of
24 the date of this Joint Report. The parties, however are open to discussing a
25 potential resolution of this case.

1 Plaintiffs propose that the parties submit to private mediation. Defendant
2 will consider private mediation, provided that the mediation be a joint mediation
3 that includes counsel for all related matters.

4 *Plaintiffs*

5 Plaintiffs believe that private mediation is appropriate but, given that the
6 related cases have not been formally coordinated, does not believe that joint
7 mediation regarding issues presented by the other cases would be productive.

8 **V. TRIAL**

9 *Defendant's Estimate*

10 Should this case not proceed as a class or representative action, Defendant
11 estimates that trial as to Plaintiffs' individual claims will take six days.

12 Should this case proceed as a class and/or representative action, Defendant
13 estimates that trial will take three to six months depending upon the size and scope
14 of the putative class.

15 *Plaintiffs' Estimate*

16 Should this case not proceed as a class or representative action, Plaintiffs
17 estimate that trial as to Plaintiffs' individual claims will take two weeks.

18 Should this case proceed as a class and/or representative action, Plaintiffs
19 estimate that trial will take three to four weeks.

20 **VI. ADDITIONAL PARTIES**

21 Neither Defendant nor Plaintiffs intend to add additional parties to this
22 action.

23 **VII. EXPERT WITNESSES**

24 *Defendant*

25 Defendant anticipates that it will retain one (1) expert for trial, should this
26 case proceed on a class basis.

1 Should Plaintiffs retain an expert witness to provide testimony in support of
2 their Motion for Class Certification motion, should Plaintiffs file such a motion,
3 Defendant proposes that precertification expert disclosures under the Fed. Rule of
4 Civ. Proc. 26(a)(2) shall be made thirty (30) days in advance of Plaintiffs' filing of
5 their Motion for class certification. Defendant further proposes that pretrial expert
6 disclosures under Fed. Rule of Civ. Proc. 26(a)(2) be made ninety (90) days prior to
7 trial.

8 *Plaintiffs*

9 Plaintiffs anticipate that they will retain at least two to three experts whether
10 the action proceeds on a class basis or not. Plaintiffs believe that expert disclosures
11 should comport with Federal Rules of Civil Procedure.

12
13 **VIII. DISCOVERY PLAN**

14 **A. Initial Disclosures**

15 The parties agree that initial disclosures under Fed. Rule Civ. Proc. 26(a)
16 shall be due on October 1, 2012, the date of the Scheduling Conference in this
17 matter.

18
19 **B. Phasing of Discovery**

20 *Defendant*

21 Defendant asserts that prior to class certification, discovery should be limited
22 to Plaintiffs' individual claims and whether this case may be maintained as a class
23 or representative action. Defendant further asserts that merits discovery concerning
24 individual putative class members (other than Plaintiffs) should not occur unless or
25 until the Court determines that this case should proceed as a class or representative
26 action.

1 On July 24, 2012, Magistrate Judge Frederick F. Mumm issued an order
2 initially limiting Plaintiffs' discovery of information and documents concerning
3 individual putative class members to those MGTs who worked in Plaintiffs' stores
4 after November 4, 2009, due to the fact that Plaintiffs had released their claims
5 prior to November 4, 2009, and failed to meet their burden to make a *prima facie*
6 showing that the class action requirements had been satisfied as to other categories
7 of putative class member employees or that the class-wide discovery they seek is
8 likely to produce substantiation of the class allegations. The Court did however did
9 order Walgreens to produce the contact information for all employees who worked
10 in Plaintiffs' stores after November 4, 2009, and Defendant has complied.

11 Defendant disputes Plaintiffs' contention that the Court's July 24, 2012
12 Order further required Defendant to produce data and information (other than
13 employee contact information) concerning employees working in other job
14 positions in Plaintiffs' stores after November 4, 2009, and as to the 41 employees
15 who opted out of the earlier class settlement in the case of *Kelly v. Walgreen*,
16 regardless of whether such opt-outs worked in the same stores, or job positions as
17 Plaintiffs. On September 6, 2012, the parties filed a motion seeking clarification of
18 Magistrate Mumm's July 24, 2012 Order. Magistrate Judge Mumm has taken the
19 Motion under submission and issued an order stating that the Court would rule on
20 the Motion without oral argument.

21 It is Defendant's contention that discovery should not be expanded beyond
22 Plaintiffs' stores and the MGT job position, or extend back prior to November 4,
23 2009, unless and until Plaintiffs are able to make a *prima facie* showing that the
24 class action requirements had been satisfied as to other categories of putative class
25 member employees or that the class-wide discovery they seek is likely to produce
26 substantiation of the class allegations. To date Plaintiffs have made no such
27 showing.

1 *Plaintiffs*

2 Plaintiffs agree that prior to class certification, discovery should be limited to
3 Plaintiffs' individual claims and whether this case may be maintained as a class or
4 representative action. Plaintiffs also agree that merits discovery concerning
5 individual putative class members (other than Plaintiffs) should not occur unless or
6 until the Court determines that this case should proceed as a class or representative
7 action.

8 Given that Judge Mumm limited class discovery to the stores where the two
9 plaintiffs worked, Plaintiffs are contemplating a motion for reconsideration,
10 particularly if Defendant intends to solicit or use information obtained from class
11 members who worked at other stores.

12 **C. Subjects of Discovery**

13 *Defendant*

14 Defendant intends to conduct discovery concerning Plaintiffs' individual
15 claims and their claims that this case should be certified as a class action and/or
16 proceed as a representative action.

17 Defendant intends to complete Plaintiffs' depositions by February 28, 2013.
18 Defendant further intends to depose any declarants used in support of Plaintiffs'
19 Motion for Class Certification, should Plaintiffs file such a Motion, including any
20 experts.

21 In addition, should this case proceed as a class action, Defendant will likely
22 depose additional class members concerning both class certification and merits
23 issues. Defendant is at this time unable to estimate the number of depositions that
24 might be required should this case be certified as a class action. Defendant,
25 however, intends to complete all such discovery within 120 days after the Court's
26 ruling on Plaintiffs' Motion for Class Certification, should Plaintiffs file such a
27 Motion.

1 *Plaintiffs*

2 Plaintiffs and Defendant may meet and confer regarding whether an audit
3 (observational study, time or motion study of workers at randomly selected store
4 locations) is appropriate. The parties may also meet and confer regarding the
5 issuance of subpoenas seeking records of third parties (product suppliers, etc.).

6 **D. Claims of Privilege & Protection**

7 The Parties have agreed to a protective order to safeguard Defendant's
8 confidential, proprietary information, and any sensitive/confidential employee
9 information.

10 Defendant will provide a privilege log identifying pre-litigation documents
11 responsive to Plaintiffs' document demands that Defendant is withholding based on
12 a claim of attorney-client privilege and/or attorney work product protection.
13 Defendant will describe generally, any privileged communications occurring and
14 work product prepared during the course of other litigations involving similar
15 claims, without specifically listing each communication and each document subject
16 to work product protection.

17 **E. Changes to the Discovery Rules**

18 The parties do not anticipate the need to divert from the applicable discovery
19 rules under the Fed. Rules of Civ. Proc. and the Central District Local Rules at this
20 time, except that Defendant believes that discovery should be formally coordinated
21 in the related actions identified in Defendant's Notice of Related Cases, to avoid
22 duplication of depositions and the requirement that Defendant respond to
23 duplicative written discovery requests in the related actions.

24 **F. Preservation of Evidence and Electronically Stored**
25 **Information ("ESI")**

26 Both parties agree that Defendant shall preserve email for its stores and the
27 parties agree to meet and confer concerning the undue burden and excessive cost
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1 which Defendant contends is associated with reviewing and producing emails
2 responsive to Plaintiffs' document demands. Both parties agree to meet and confer
3 concerning Defendant's purported undue burden and/or excessive costs involved in
4 preserving video footage of its stores. Defendant asserts that its counsel, Diana
5 Tabacopoulos, previously wrote to Plaintiffs' counsel, to meet and confer with
6 Plaintiffs concerning the potential preservation of video surveillance of its
7 California stores. As of the date of this Joint Report, Plaintiffs have not responded
8 to Ms. Tabacopoulos' letters. Plaintiffs have not requested that Defendants
9 preserve any other types of evidence or ESI other than as set forth in this Joint
10 Report.

11 Defendant agrees to produce documents in hard copy form and to provide
12 electronic copies upon the request of counsel, provided that such documents are
13 regularly maintained by Defendant in an electronic format.

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G. Any Other Orders the Court Should Issue Under Rule 26(c) or 16(b)

Defendant requests an order coordinating this action with the actions identified in its Notice of Related Cases for purposes of discovery.

Pursuant to Local Rule 5-4.3.4(2)(ii), I hereby attest that the content of this document is acceptable to Molly A. DeSario, counsel for Plaintiffs, and that I have obtained Ms. DeSario's authorization to affix their electronic signature to this document.

DATED: September 24, 2012

SEYFARTH SHAW LLP

By /s/ Diana Tabacopoulos
Diana Tabacopoulos
Jill Porcaro
Candace Bertoldi
Attorneys for Defendant
WALGREEN CO.

DATED: September 24, 2012

**SCOTT COLE & ASSOCIATES,
APC**

By /s/ Molly A. DeSario
Molly A. DeSario, Esq.
Attorneys for the Representative
Plaintiffs and the Plaintiff Classes

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067. On September 24, 2012, I served the within documents:

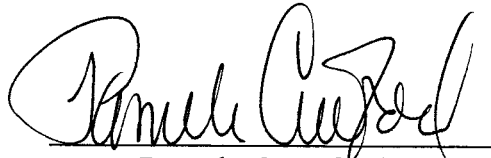
**JOINT PLANNING REPORT PURSUANT TO FED. RULE CIV. PROC. 26
AND LOCAL RULE 26**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, addressed as set forth below.

☒ electronically by using the Court's ECF/CM System.

| | |
|------------------------------|----------------------------|
| Scott Edward Cole | Tel: 510-891-9800 |
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I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. Executed on September 24, 2012, at Los Angeles, California.


Pamela Crawford